

**IN THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA**

LINDA PRITCHETT,	:	
	:	
Challenger/Petitioner,	:	
	:	Docket NUMBER:
v.	:	OSAH-SECSTATE-CE-1238680-60
	:	HOWELLS
RONALD E. "RONNIE" MABRA JR.,	:	
	:	
Candidate/Respondent.	:	
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FINAL DECISION

Challenger/Petitioner, Linda Pritchett, filed this candidate challenge pursuant to O.C.G.A. § 21-2-5 contending that Respondent, Ronald E. "Ronnie" Mabra Jr., does not meet the qualifications to be a candidate for the Georgia House of Representatives in District 63. Specifically, Petitioner contends that Respondent fails to meet the residency requirements set forth in Article III, Section II, Paragraph III(b) of the Georgia Constitution and O.C.G.A. § 28-2-1(b) because Respondent has not been a resident of the territory embraced within House District 63 for at least one year.

Judge Stephanie M. Howells, Administrative Law Judge ("ALJ") for the Office of State Administrative Hearings, held an administrative hearing on July 3, 2012 and entered an Initial Decision in this matter on July 16, 2012.

For the reasons explained below, the Secretary of State rejects the decision of the ALJ and finds that Respondent meets the residency requirements to be a candidate for the Georgia House of Representatives in District 63.

I. FINDINGS OF FACT

1.

Respondent filed a sworn Declaration of Candidacy and Affidavit on May 23, 2012, to qualify for the Democratic nomination for the Georgia House of Representatives District 63. On June 6, 2012, Petitioner, a registered voter and eligible elector in House District 63,¹ filed a challenge to Respondent's residency qualifications with the Secretary of State. (OSAH Form 1 and attachments.)

2.

The General Election is scheduled for November 6, 2012. To be qualified as a candidate for the Georgia House of Representatives in District 63, Respondent must have maintained residency in House District 63 since at least November 6, 2011. (OSAH Form 1 and attachments.)

3.

Respondent and his wife resided at 361 17th Street NW, Atlanta, Georgia until late 2010, when Respondent "understood" that the property was going into foreclosure. At that time, Respondent and his wife moved in with Respondent's mother, Bernadine Patty Mabra, at 155 Thornton Court, Fayetteville, Georgia. The bank foreclosed on the property located at 361 17th Street NW, Atlanta, Georgia on January 4, 2011. (Findings of Fact at ¶ 4.)

4.

On September 27, 2011, Bernadine Patty Mabra conveyed the property located at 155 Thornton Court, Fayetteville, Georgia 30214 to Respondent, as a joint tenant with right of survivorship. The Limited Warranty Deed conveying the property to Respondent and Bernadine

¹ The Petitioner is also a candidate for the Democratic nomination for House District 63.

Patty Mabra was filed in Fayette County on October 3, 2011. (Exhibit R-A.)

5.

On October 6, 2011, Respondent and Bernadine Patty Mabra filed an Application for Homestead Exemption and Affidavit of Homestead Exemption for the 2012 tax year for the property located at 155 Thornton Court, Fayetteville, Georgia 30214. (Exhibit R-C.) Additionally, the Fayette County Board of Assessors issued an Annual Notice of Assessment to Respondent and Bernadine Patty Mabra on May 4, 2012, for the property located at 155 Thornton Court, Fayetteville, Georgia 30214. (Exhibit R-I.)

6.

Respondent registered to vote at 155 Thornton Court, Fayetteville, Georgia 30214 on October 29, 2011. (Exhibit R-E.)

7.

Respondent's address on his federal income tax return for the tax year ending December 31, 2011, was 155 Thornton Court, Fayetteville, Georgia 30214. (Exhibit R-G.) Additionally, Respondent provided evidence showing that he has received bank statements at 155 Thornton Court, Fayetteville, Georgia since the statement period ending October 26, 2011. (Exhibit R-D.)

8.

Respondent's wife purchased property at 1225 State Street, Atlanta, Georgia on July 14, 2011 and entered a lease agreement with Respondent's law firm for that property on June 1, 2012.² (Exhibit P-D; Exhibit R-M.)

² The Georgia Supreme Court in Dozier v. Baker, 283 Ga. 543 (2008), previously held that neither the residence nor the domicile of a candidate's spouse is presumed to be that of the candidate, even if the candidate's spouse has claimed a homestead exemption on the property where the spouse resides.

9.

Respondent intended to reside at the property in Fayette County in as late as October 2011, and the relevant evidence demonstrates that Respondent intended to establish a new residence, or "to change [his] domicile," without regard to its motive for doing so. (Initial Decision at ¶ 5.)

II. CONCLUSIONS OF LAW

1.

The Georgia Election Code requires that "[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. § 21-1-5(a).

2.

At the time of their election, members of the Georgia House of Representatives "shall have been legal residents of the territory embraced within the district from which elected for at least one year." Ga. Const., Art. III, § II, Par. III(b); O.C.G.A. § 21-2-1(b).

3.

Within two weeks after the deadline for qualifying, any elector who is eligible to vote for a candidate may challenge the qualifications of the candidate with the Secretary of State giving the reasons why the elector believes the candidate is not qualified to seek and hold the public office for which he or she is offering. O.C.G.A. § 21-2-5(b). Petitioner's challenge on June 6, 2012, was timely and thus authorized under the Georgia Election Code.

4.

It is well established under Georgia law that the burden of proof in an action challenging

the eligibility of a candidate for office is placed entirely upon the candidate to establish his eligibility for office. Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The party challenging the candidate "is not required to disprove anything" regarding the candidate's eligibility to run for office. Id. In the case at bar, to be qualified as a candidate, Respondent must prove that he is a resident of House District 63 and that he has been a resident of House District 63 since at least November 6, 2011.

5.

When resolving issues related to Respondent's residency, it is necessary to look to both statutory and common law regarding residency. In determining the residency of a candidate for public office, the term "residence" refers to "domicile." O.C.G.A. § 21-2-2(32); Handel v. Powell, 284 Ga. 550; Clark v. Hammock, 228 Ga. 157 (1971). When determining the residence of a person desiring to qualify to run for elective office, the rules contained in O.C.G.A. § 21-2-217(a) are to be followed "so far as they are applicable." See Handel v. Powell, 284 Ga. 550, 554 (2008).

6.

The rules contained in O.C.G.A. § 21-2-217(a) are relevant to the facts of this case and have guided the Secretary of State in his consideration of this matter. If a person removes to another county in this state with the intention of making it such person's residence, such person shall be considered to have lost such person's residence in the former county. O.C.G.A. § 21-2-217(a)(4.1). However, a person is not considered to gain residence in any county into which such person has gone for temporary purposes if the person does not have the intention of making such county the person's permanent place of abode. O.C.G.A. § 21-2-217(a)(3). Moreover, a person who leaves such person's home and goes into another county in this state for temporary

purposes with the intention of returning home shall not be considered to have lost such person's residence, unless such person registers to vote or perform other acts indicating a desire to change such person's residence. O.C.G.A. § 21-2-217(a)(2).

7.

"The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention." O.C.G.A. § 21-2-217(a)(9). Furthermore, the specific address in the county in which a person has declared a homestead exemption shall be deemed the person's residence address, and certain evidence - such as where the person receives a significant amount of mail - may also be considered. O.C.G.A. §§ 21-2-217(a)(14)-(15).

8.

In determining whether a candidate has met his burden of proof, the proper question for the ALJ is not Respondent's motive for his actions, but rather Respondent's intent to establish legal residency in House District 63. See Dozier v. Baker, 283 Ga. 543, 545 (2008). A candidate can demonstrate his intent to acquire a new residence in many ways, including voter registration, homestead exemption, income tax returns, payment of property taxes, declaration of candidacy and qualifying affidavit, the address where the candidate receives personal and business mail, and church attendance. Dozier, 283 Ga. at 544.

9.

A candidate's address for the purpose of voter registration is "particularly persuasive."
Id.

10.

The domicile of a candidate's spouse is not determinative of the domicile of the

candidate, and no particular amount of time spent at another residence is decisive of the question of domicile. Id.

11.

In this matter, Respondent has the burden to demonstrate that he is a resident of House District 63 and has been a resident of House District 63 since at least November 6, 2011. After reviewing the evidence, the Respondent has met his burden of proof. Although Respondent spends time in Atlanta and his wife owns property in Atlanta, the evidence presented by Respondent demonstrates that he has resided at 155 Thornton Court, Fayetteville, Georgia 30214 since before November 6, 2011 and will therefore meet the residency requirements set forth in Article III, Section II, Paragraph III(b) of the Georgia Constitution and O.C.G.A. § 28-2-1(b).

12.

Although the State Election Board may need to consider whether Respondent's sworn statements made on his Declaration of Candidacy and Affidavit constituted false swearing or, in the alternative, were the result of an ambiguous term, the residency requirements set forth in Georgia law only require Respondent to be a legal resident in House District 63 for one year from the date of the General Election on November 6, 2012. See Ga. Const., Art. III, § II, Par. III(b); see also O.C.G.A. § 21-2-565. Respondent's intent to acquire a new residence is demonstrated from the totality of the circumstances. As indicated in the Initial Decision, Respondent resided in Fulton County at 361 17th Street NW, Atlanta, Georgia until late 2010 when Respondent understood that his property was going into foreclosure. (Initial Decision at ¶ 4.) Respondent moved to 155 Thornton Court, Fayetteville, Georgia in Fayette County after leaving the residence in Fulton County in 2010. In September 2011, Respondent was conveyed the property at 155 Thornton Court, Fayetteville, Georgia as a joint tenant despite having moved

there prior to acquiring the new residence. In October 2011, Respondent filed an Application for Homestead Exemption for the residence at 155 Thornton Court, Fayetteville, Georgia that he was deeded the prior month. Respondent also changed the address where his billing statements were sent by Bank of America and registered to vote in October 2011 using his address in Fayette County. Although Respondent spends time in Fulton County, where he works, Respondent's actions do not evidence his intent to make Fulton County his residence. Moreover, Respondent's wife's purchase of property located in Fulton County at 1225 State Street, Atlanta, Georgia, even if she intended to make the property her domicile, is not determinative of the Respondent's domicile. See Dozier, 283 Ga. at 544. Finally, as indicated in the Initial Decision, Respondent intended "to change [his] domicile" when he moved to 155 Thornton Court, Fayetteville, Georgia. (Initial Decision at ¶ 5.)

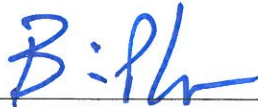
13.

Based on the facts and law, Respondent has proven by a preponderance of the evidence that he resides in House District 63 and has resided in that district since before November 6, 2011.

III. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY DECIDED THAT the Respondent, Ronald E. "Ronnie" Mabra, is qualified to be a candidate for the Georgia House of Representatives in District 63.

SO DECIDED this 25th day of July 2012.



BRIAN P. KEMP
Georgia Secretary of State